

be of various lengths. For more details on copyright terms as applied in a digitization project, see below.

Copyright Issues for Digitization

There are three issues that dominate copyright questions for cultural institutions embarking upon a digitization project:

- Is the work in the Public Domain?
- Does my action fall under Fair Use?
- Am I respecting the Moral Rights of the creator?

The Public Domain

The Public Domain is defined as “all entities, information, and creative works that are available for use by anyone for any reason without restriction.”¹ A public domain work is a creative work that is not protected by copyright and which may be freely used by everyone. Reasons that a work is in the public domain and not protected include:

- (1) the work is a work of the U.S. Government employee in the course of their duties;
- (2) the work was created before copyright laws were established;
- (3) the author failed to satisfy statutory formalities to establish the copyright; or
- (4) the term of copyright for the work has expired.

Works in the public domain may be used freely by anyone. It is assumed that many of the materials in special collections are old and in the public domain, but often this is not the case. Determining if the material you wish to digitize is free of copyright restrictions is a critical first step in the digitization process and linked to the selection process. In general, works published in the United States prior to 1923 are in the public domain. Works published later may be in the public domain but will require some research first. Generally, the copyright holder is the person who created the work. Since registration is not currently required to document this ownership, it can be difficult to determine copyright ownership. If, however, ownership of copyright is transferred to another party, as in published or film companies, there must be a written assignment. This type of copyright is then easier to trace. When the copyright term expires, the work is in the public domain.

There are several resources available to track the various changes in copyright law, and to use as a tool in trying to assess the copyright status of an item. Laura Gasaway, Director of the Law Library and Professor of Law at the University of North Carolina, Chapel Hill, has created a chart to help determine whether or not any material in question is in the public domain. The chart can be found at <http://www.unc.edu/~uncclng/public-d.htm>, and it is reproduced here as it existed in March 2007.

¹ Zorich, D. “Why the Public Domain is Not Just a Mickey Mouse Issue,” NINCH Copyright Town Meeting, Chicago Historical Society, January 11, 2000.
<http://www.ninch.org/copyright/2000/chicagozorich.html>